

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LANCE R. MARTIN,

Plaintiff,

v.

C. PFZIFER, et al.,

Defendants.

Case No. 1:20-cv-00605-NONE-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS; DENYING
PLAINTIFF'S APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES; AND
DISMISSING ACTION AS FRIVOLOUS

(Doc. No. 5)

Lance R. Martin ("Plaintiff") is appearing *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 4, 2020, the assigned magistrate judge filed a findings and recommendations recommending that the complaint be dismissed without leave to amend as frivolous and that plaintiff's application to proceed *in forma pauperis* without prepayment of fees be denied. (Doc. No. 5.) The findings and recommendations were served on plaintiff and contained notice that any objections were to be filed within thirty days. Plaintiff did not file formal objections. Instead, on May 20, 2020, plaintiff filed a notice of appeal that was processed to the U.S. Court of Appeals for the Ninth Circuit. (Doc. No. 6.)

In accordance with 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings and

1 recommendations to be supported by the record and by proper analysis. Plaintiff, who is no
2 longer in custody, alleges that defendants—all of whom are employees at state prisons where he
3 once was incarcerated—are using electronic devices to control citizens around plaintiff in
4 various ways, including by causing those citizens to adulterate plaintiff's food, drink, and water.
5 (*See generally* Doc. No. 1.) The findings and recommendations reasonably concluded that
6 plaintiffs' claims were not cognizable or grounded in reality and should be dismissed.


7 To the extent plaintiff's May 20, 2020 notice of appeal was intended by plaintiff to
8 constitute objections to the pending findings and recommendations, the notice of appeal contains
9 no information or argument that would justify departure from those recommendations.¹

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The findings and recommendations, filed May 4, 2020 (Doc. No. 5), are
12 ADOPTED IN FULL;
- 13 2. Plaintiff's application to proceed without prepayment of fees is DENIED;
- 14 3. The complaint in this matter is DISMISSED WITHOUT LEAVE to amend as
15 frivolous;
- 16 4. The Clerk of the Court is DIRECTED to assign this matter to a United States
17 district judge for the purposes of closing this case and to CLOSE THIS CASE

18 IT IS SO ORDERED.

19 Dated: **June 17, 2020**

20 
UNITED STATES DISTRICT JUDGE

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23 ¹ Plaintiff's notice of appeal was filed before the undersigned reviewed the magistrate judge's
24 findings and recommendations. Generally, "the filing of a notice of appeal divests a district
25 court of jurisdiction over those aspects of the case involved in the appeal." *Stein v. Wood*, 127
26 F.3d 1187, 1189 (9th Cir. 1997). However, there is an exception to the general rule when the
27 appeal is frivolous. *Marks v. Clarke*, 102 F.3d 1012, 1017 n. 8 (9th Cir. 1996) (citations
28 omitted). Here, plaintiff did not appeal from an appealable final order, so his appeal is frivolous.
See 28 U.S.C. § 1291; *see also* *Guymon v. Nasset*, No. CV 16-68-M-DLC-JCL, 2016 WL
5475971, at *1 (D. Mont. Sept. 29, 2016) (finding an appeal from a magistrate judge's findings
and recommendations noticed to the Ninth Circuit before the findings and recommendations
were addressed by the district judge to be frivolous). This order will also serve as certification
that plaintiff's appeal is frivolous.